

Effective 5/10/2016

67-19-6.7 Overtime policies for state employees.

(1) As used in this section:

(a) "Accrued overtime hours" means:

- (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end of the fiscal year, have not been paid and have not been taken as time off by the nonexempt state employee who accrued them; and
- (ii) for exempt employees, overtime hours earned during an overtime year.

(b) "Appointed official" means:

- (i) each department executive director and deputy director, each division director, and each member of a board or commission; and
- (ii) any other person employed by a department who is appointed by, or whose appointment is required by law to be approved by, the governor and who:
 - (A) is paid a salary by the state; and
 - (B) who exercises managerial, policy-making, or advisory responsibility.

(c) "Department" means the Department of Administrative Services, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Control, the Insurance Department, the Public Service Commission, the Labor Commission, the Department of Agriculture and Food, the Department of Human Services, the State Board of Education, the Department of Natural Resources, the Department of Technology Services, the Department of Transportation, the Department of Commerce, the Department of Workforce Services, the State Tax Commission, the Department of Heritage and Arts, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of Public Safety, the Department of Human Resource Management, the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General, merit employees in the Office of the State Treasurer, merit employees in the Office of the State Auditor, Department of Veterans' and Military Affairs, and the Board of Pardons and Parole.

(d) "Elected official" means any person who is an employee of the state because the person was elected by the registered voters of Utah to a position in state government.

(e) "Exempt employee" means a state employee who is exempt as defined by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq., by which a nonexempt employee elects the form of compensation the nonexempt employee will receive for overtime.

(h) "Nonexempt employee" means a state employee who is nonexempt as defined by the Department of Human Resource Management applying FLSA requirements.

(i) "Overtime" means actual time worked in excess of the employee's defined work period.

(j) "Overtime year" means the year determined by a department under Subsection (4)(b) at the end of which an exempt employee's accrued overtime lapses.

(k) "State employee" means every person employed by a department who is not:

- (i) an appointed official;
- (ii) an elected official;
- (iii) a member of a board or commission who is paid only for per diem or travel expenses; or
- (iv) employed on a contractual basis by the State Board of Education.

(l) "Uniform annual date" means the date when an exempt employee's accrued overtime lapses.

(m) "Work period" means:

- (i) for all nonexempt employees, except law enforcement and hospital employees, a consecutive seven day 24 hour work period of 40 hours;
 - (ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and
 - (iii) for nonexempt law enforcement and hospital employees, the period established by each department by rule for those employees according to the requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.
- (2) Each department shall compensate each state employee who works overtime by complying with the requirements of this section.
- (3)
 - (a) Each department shall negotiate and obtain a signed FLSA agreement from each nonexempt employee.
 - (b) In the FLSA agreement, the nonexempt employee shall elect either to be compensated for overtime by:
 - (i) taking time off work at the rate of one and one-half hour off for each overtime hour worked; or
 - (ii) being paid for the overtime worked at the rate of one and one-half times the rate per hour that the state employee receives for nonovertime work.
 - (c) Any nonexempt employee who elects to take time off under this Subsection (3) shall be paid for any overtime worked in excess of the cap established by the Department of Human Resource Management.
 - (d) Before working any overtime, each nonexempt employee shall obtain authorization to work overtime from the employee's immediate supervisor.
 - (e) Each department shall:
 - (i) for employees who elect to be compensated with time off for overtime, allow overtime earned during a fiscal year to be accumulated; and
 - (ii) for employees who elect to be paid for overtime worked, pay them for overtime worked in the paycheck for the pay period in which the employee worked the overtime.
 - (f) If the department pays a nonexempt employee for overtime, the department shall charge that payment to the department's budget.
 - (g) At the end of each fiscal year, the Division of Finance shall total all the accrued overtime hours for nonexempt employees and charge that total against the appropriate fund or subfund.
- (4)
 - (a)
 - (i) Except as provided in Subsection (4)(a)(ii), each department shall compensate exempt employees who work overtime by granting them time off at the rate of one hour off for each hour of overtime worked.
 - (ii) The executive director of the Department of Human Resource Management may grant limited exceptions to this requirement, where work circumstances dictate, by authorizing a department to pay employees for overtime worked at the rate per hour that the employee receives for nonovertime work, if the department has funds available.
 - (b)
 - (i) Each department shall:
 - (A) establish in its written human resource policies a uniform annual date for each division that is at the end of any pay period; and
 - (B) communicate the uniform annual date to its employees.

- (ii) If any department fails to establish a uniform annual date as required by this Subsection (4), the executive director of the Department of Human Resource Management, in conjunction with the director of the Division of Finance, shall establish the date for that department.
 - (c)
 - (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a benefit, and is not a vested right.
 - (ii) A court may not construe the overtime for exempt employees authorized by this Subsection (4) as an entitlement, a benefit, or as a vested right.
 - (d) At the end of the overtime year, upon transfer to another department at any time, and upon termination, retirement, or other situations where the employee will not return to work before the end of the overtime year:
 - (i) any of an exempt employee's overtime that is more than the maximum established by the Department of Human Resource Management rule lapses; and
 - (ii) unless authorized by the executive director of the Department of Human Resource Management under Subsection (4)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by paying the employee for the overtime or by granting the employee time off for the lapsed overtime.
 - (e) Before working any overtime, each exempt employee shall obtain authorization to work overtime from the exempt employee's immediate supervisor.
 - (f) If the department pays an exempt employee for overtime under authorization from the executive director of the Department of Human Resource Management, the department shall charge that payment to the department's budget in the pay period earned.
- (5) The Department of Human Resource Management shall:
- (a) ensure that the provisions of the FLSA and this section are implemented throughout state government;
 - (b) determine, for each state employee, whether that employee is exempt, nonexempt, law enforcement, or has some other status under the FLSA;
 - (c) in coordination with modifications to the systems operated by the Division of Finance, make rules:
 - (i) establishing procedures for recording overtime worked that comply with FLSA requirements;
 - (ii) establishing requirements governing overtime worked while traveling and procedures for recording that overtime that comply with FLSA requirements;
 - (iii) establishing requirements governing overtime worked if the employee is "on call" and procedures for recording that overtime that comply with FLSA requirements;
 - (iv) establishing requirements governing overtime worked while an employee is being trained and procedures for recording that overtime that comply with FLSA requirements;
 - (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt employee may accrue before a department is required to pay the employee for the overtime worked;
 - (vi) subject to the FLSA, establishing the maximum number of overtime hours for an exempt employee that do not lapse; and
 - (vii) establishing procedures for adjudicating appeals of any FLSA determinations made by the Department of Human Resource Management as required by this section;
 - (d) monitor departments for compliance with the FLSA; and
 - (e) recommend to the Legislature and the governor any statutory changes necessary because of federal government action.

- (6) In coordination with the procedures for recording overtime worked established in rule by the Department of Human Resource Management, the Division of Finance shall modify its payroll and human resource systems to accommodate those procedures.
- (a) Notwithstanding the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who is aggrieved by the FLSA designation made by the Department of Human Resource Management as required by this section may appeal that determination to the executive director of the Department of Human Resource Management by following the procedures and requirements established in Department of Human Resource Management rule.
- (b) Upon receipt of an appeal under this section, the executive director shall notify the executive director of the employee's department that the appeal has been filed.
- (c) If the employee is aggrieved by the decision of the executive director of the Department of Human Resource Management, the employee shall appeal that determination to the Department of Labor, Wage and Hour Division, according to the procedures and requirements of federal law.

Amended by Chapter 144, 2016 General Session